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BY ECF

Hon. Andrew L. Carter
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *E.F. et al. v. Adams, et al.*
Index No. 20 CV 11150 (ALC) (SN)

Dear Judge Carter,

I am an Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and attorney for the City Defendants in the case referenced above. I write jointly with counsel for the other parties, and pursuant to the Court's Order, set forth in its Opinion and Order dated March 1, 2022, to provide this status update.

Defendants' Update

Regarding the progress of the implementation of the "OATH plan" (the plan by which impartial due process hearings in New York City for claims brought pursuant to the Individuals with Disabilities Education Act will be adjudicated by OATH, *i.e.* the Office of Administrative Trials and Hearings), the Defendants are proceeding with the plan. OATH has hired 17 impartial hearing officers, each for a four-year term, with five more slated to start soon and hiring ongoing for additional hearing officers. The 22 individuals hired (or soon to be onboarded) by OATH come from a variety of backgrounds, including 10 from outside City government and a number from New York City legal roles such as at the Law Department, the Administrative for Children's Services, and the Fire Department, and two from full-time OATH adjudicative positions. The New York State Education Department has conducted one training so far, on February 22-24, 2022, and has two trainings scheduled over the next three months (and anticipates scheduling a fourth) for OATH impartial hearing officers who are hired in the interim. Thirteen of the 17 hearing officers have been certified by the State and are able to begin

presiding over cases. The hires also include six individuals with preexisting certification as impartial hearing officers (five of whom have been actively serving as hearing officers and who are continuing to adjudicate their existing cases). These officers have thus far conducted 25 pre-hearing conferences, 47 status conferences and 9 hearings while employed by OATH. OATH has also hired staff to provide administrative support and has allocated office space for both hearing officers and administrative proceedings. OATH is also executing contracts for translation/interpretation and transcription services, is developing internal rules and procedures for conducting hearings, and is in the process of developing a scope of work for an electronic filing system. These efforts continue apace, and OATH hopes to begin taking on new cases soon.

Regarding the related proceeding of *Gronbach et al. v. N.Y. State Education Department et al.*, Index No. 910574-2021 in the New York State Supreme Court in the County of Albany, the parties' cross-motions are not yet fully briefed. At Petitioners' request, the return date has been adjourned to April 1, 2022, with the next submissions due later this week.

Plaintiffs' Update

Plaintiffs were advised of the above general information from Defendants for the first time today, at approximately 11:30 a.m., with some of the additional details concerning the alleged background of IHOs provided to use this evening. We cannot join in representing the accuracy of the information provided by Defendants. We also found out after 5 p.m. today that all Defendants plan to request a conference for the purpose of moving to dismiss.

In terms of Plaintiffs' update, we heard information from our staff and colleagues that some of the formerly independent contractor IHOs had been hired by OATH and were conducting hearings pursuant to OATH. Additionally, some of those IHOs did not advise (and have not yet advised) the parents and/or their counsel that their cases have moved to OATH.

Since we have not been provided a list of the new IHOs, all of our information is being provided upon information and belief. As far as we are aware, the IHOs who transferred from the special education system are either new IHOs (starting within the past year), were already OATH officers, or former City employees. Only one of these IHOs had special education law experience. Upon information and belief at least one of the "experienced" IHOs has never presided over a special education case before transferring. Moreover, from reviewing the websites and Linked In pages of some of the other IHOs that we have been to confirm as OATH IHOs, only two appear to have special education backgrounds. The rest appear to be individuals formerly employed by the City, CCRB or affiliated with OATH. They include current and former attorneys from ACS, a former Managing Attorney of Health Appeals Unit of OATH, and an appellate attorney at OATH who was also an administrative prosecutor at CCRB. It also appears that Defendants have certified as IHOs the Senior Legal Counsel for OATH and the Deputy Commissioner and chief clerk at OATH. Defendants have advised that these individuals were not counted among the new IHOs, but we are unclear as to why they appear on the list of certified IHOs or what their new roles will be.

In the course of drafting of this letter, Plaintiffs requested the resumes of the IHOs who were hired, so we do not have to engage in guess work. Defendants have not indicated whether they will voluntarily agree to provide this information.

Further, there was a meeting of the New York State Regents yesterday to discuss amending the New York State Commissioner's Regulations to, *inter alia*, prevent existing certified hearing officers from accepting any new cases. The proposed regulations have not yet been issued for public comment, but we heard that they will be issued shortly.

Joint Update

Lastly, the parties are scheduled to meet and confer regarding the possibility of settlement this Thursday, March 17, 2022.

In preparing this letter, I have communicated by email with Elisa Hyman, Esq., James Sanborn, Esq. and Gary Mayerson, Esq., Plaintiffs' attorneys, as well as Elyce Matthews, Esq., and Mark Ferguson, Esq., attorneys for the State Defendants. This letter is submitted jointly.

Thank you for your consideration of this matter.

Respectfully submitted,

s/

Andrew J. Rauchberg
Assistant Corporation Counsel

cc: All counsel of record